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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

23 Cr. 118 (AT)

5 YANPING WANG,

6 Hearing

7 Defendant.

8 -----x

9 New York, N.Y.
10 April 9, 2024
11 11:00 a.m.

12 Before:

13 HON. ANALISA TORRES,

14 District Judge

15 APPEARANCES

16 DAMIAN WILLIAMS

17 United States Attorney for the
18 Southern District of New York

19 BY: JUSTIN HORTON

20 JULIANA MURRAY

21 MICAH FERGENSON

22 RYAN FINKEL

23 Assistant United States Attorneys

24 BRENDAN QUIGLEY

25 RACHEL SEBBAG

Attorneys for Defendant

Also Present: Isabel Loftus, Paralegal Specialist USAO

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(Case called)

MR. QUIGLEY: Good morning. We are here in the matter of The United States v. Yanping Wang.

Would you make your appearances, please.

MR. HORTON: Good morning, your Honor.

Justin Horton for the government. I'm joined at counsels' table by Assistant U.S. Attorneys Juliana Murray, Micah Fergenson, Ryan Finkel, and paralegal specialist, Isabel Loftus.

MR. QUIGLEY: Good morning, your Honor.

For Ms. Wang, Brendan Quigley. Ms. Wang is to my right, and I'm also joined by my colleague Rachel Sebbag from Baker Botts. Good morning.

THE COURT: And I'd like the interpreters to identify themselves.

INTERPRETER HUANG: Good morning, your Honor.

Mandarin interpreter Tor Huang, and with me is my colleague.

INTERPRETER WILKINSON: Una Wiklinson, Mandarin interpreter.

THE COURT: Ms. Wang, are you able to understand what the interpreters are saying?

THE DEFENDANT: Yes.

THE COURT: Please be seated.

The matter is on for a suppression hearing.

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Direct - Baccari

1 On March 15, 2023, the government arrested Ms. Wang at
2 her apartment and seized her cell phones. On December 15,
3 Ms. Wang moved to suppress the contents of the phones, claiming
4 that the government elicited the phone passcodes from her after
5 she had invoked her right to counsel. She argues that this is
6 a violation of *Edwards v. Arizona*, 451 U.S. 477 (1981).

7 By order dated March 22, 2024, I ordered that a
8 suppression hearing is necessary to determine whether Ms. Wang
9 invoked her right to counsel prior to being questioned
10 regarding her phone passcodes and whether the government would
11 have inevitably accessed the phones.

12 The government may call its first witness.

13 MR. HORTON: The government calls Special Agent
14 Melissa Baccari.

15 MELISSA BACCARI,

16 called as a witness by the GOVERNMENT,

17 having been duly sworn, testified as follows:

18 THE COURT: Please state your name and spell it.

19 THE WITNESS: Melissa Baccari.

20 THE COURT: You may inquire.

21 MR. HORTON: Thank you, your Honor.

22 DIRECT EXAMINATION

23 BY MR. HORTON:

24 Q. Good morning, Agent Baccari.

25 A. Good morning.

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Direct - Baccari

1 Q. Where do you work?

2 A. For the Federal Bureau of Investigation.

3 Q. And what's your title at the FBI?

4 A. Special Agent.

5 Q. How long have you been a special agent at the FBI?

6 A. Just about five years.

7 Q. And what are your job responsibilities as a special agent?

8 A. I'm assigned to a squad that investigates financial crimes.

9 Q. Do you participate in arrests?

10 A. Yes.

11 Q. Do you participate in the execution of search warrants?

12 A. Yes.

13 Q. Did there come a time, Agent Baccari, when you participated
14 in the arrest of Ms. Wang?

15 A. Yes.

16 Q. Do you see Ms. Wang in the courtroom today?

17 A. Yes.

18 Q. And where do you see her?

19 A. At the second table, the defense table.

20 MR. QUIGLEY: We'll stipulate that that's Ms. Wang.

21 Q. When was Ms. Wang arrested?

22 A. In March of 2023.

23 Q. What was the date of her arrest?

24 A. The 15th.

25 Q. And where was Ms. Wang arrested?

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Direct - Baccari

1 A. In her apartment in New York City.

2 Q. And what kind of building was her apartment in?

3 A. It was a multi-floor residential building.

4 Q. What time of day was Ms. Wang arrested?

5 A. Approximately 6 a.m.

6 Q. Were you there?

7 A. Yes.

8 Q. And where were you in the moment before she was arrested?

9 A. I was in the hallway, outside of her apartment door.

10 Q. Were you alone there?

11 A. No.

12 Q. Who else were you with?

13 A. The rest of the arrest team.

14 Q. And about how many people was that?

15 A. About ten other agents.

16 Q. Agent Baccari, what's a knock-and-announce?

17 A. The knock-and-announce is the term that we use to identify
18 ourselves as agents, advise that we have a warrant, and tell
19 the individual what we'd like them to do, which is, come to the
20 door.

21 Q. And how does a knock-and-announce work?

22 A. Agents will knock on the front door of the location where
23 we believe the individual to be located and identify themselves
24 as FBI and ask them to come to the front door, that we have a
25 warrant.

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Direct - Baccari

1 Q. Was there a knock-and-announce at Ms. Wang's that morning?

2 A. Yes.

3 Q. And where were you during the knock-and-announce?

4 A. In the hallway, behind the agents knocking and announcing.

5 Q. And where in the hallway in relation to the doorway to her
6 apartment?

7 A. I believe I would have been against the wall on the same
8 side as her door.

9 Q. Can you describe to the Court what happened after the
10 knock-and-announce?

11 A. Shortly after, Ms. Wang came to the front door.

12 Q. And what did you do next?

13 A. She was placed into custody.

14 Q. And how was she placed into custody?

15 A. I believe she was handcuffed by the agents at the front
16 door.

17 Q. And what did you do in that moment?

18 A. Ms. Wang was passed to me, and I began to interact with
19 Ms. Wang.

20 Q. And how did you begin to interact with Ms. Wang?

21 A. I advised her that we had an arrest warrant, an arrest
22 warrant for her and a search warrant for the residence,
23 including electronics, and then I read her her rights.

24 Q. And how did you read her her rights?

25 A. I read them from a card, standing in the hallway.

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1 Q. And were you alone in this moment with Ms. Wang?

2 A. No.

3 Q. Who else were you with?

4 A. Another female agent.

5 Q. Where had the rest of the agents you mentioned a moment
6 ago, where had they gone?

7 A. To clear the residence, inside the apartment.

8 Q. How did Ms. Wang respond after you read her her rights?

9 A. Compliantly and as if she understood.

10 Q. And did Ms. Wang ask you for a lawyer at that time?

11 A. No.

12 Q. Did Ms. Wang tell you she did not want to speak to you at
13 that time?

14 A. No.

15 Q. Did Ms. Wang say anything to you at all?

16 A. No. Not in the hallway.

17 Q. After you read Ms. Wang her rights in the hallway, did you
18 ask her to make a statement out there?

19 A. No. Not in the hallway.

20 Q. And why not?

21 A. I wanted to bring her inside to the bedroom, inside the
22 apartment.

23 Q. And why do you want to bring her inside the bedroom in her
24 apartment?

25 A. I just wanted to make her feel a little bit more

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Direct - Baccari

1 comfortable instead of asking her questions in the hallway
2 outside.

3 Q. And why did you want to make her more comfortable?

4 A. Just in the hopes that she'd like to speak with me.

5 Q. How long did you spend in the hallway with Ms. Wang and the
6 other female agent?

7 A. A couple of minutes.

8 Q. And then where did you go next?

9 A. We went into the apartment and back to her bedroom.

10 Q. And how did you get from the hallway back to Ms. Wang's
11 bedroom in the apartment?

12 A. We walked through the front door and passed the kitchen on
13 the left-hand side and then went directly to the bedroom.

14 Q. And what did you see while you were walking from the
15 hallway to the bedroom?

16 A. There was a line of phones on the kitchen counter in the
17 kitchen to the left.

18 Q. When you got to Ms. Wang's bedroom, who besides you was in
19 that room?

20 A. Ms. Wang and the other female agent.

21 Q. Did you have a weapon on that day, Agent Baccari?

22 A. Yes, I did.

23 Q. Where was it when you were in the hallway reading Ms. Wang
24 her rights?

25 A. In my holster.

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Direct - Baccari

1 Q. And where was it when you took her to the bedroom?

2 A. In my holster.

3 Q. Did you ever take it out of your holster that morning?

4 A. I don't believe I did.

5 Q. When you got to Ms. Wang's bedroom with her and the other
6 female agent, what, if anything, did you see?

7 A. I noted a cell phone near Ms. Wang's bed on the night
8 table.

9 Q. And what happened next?

10 A. I asked her if this was her phone and the phone that she
11 used every day.

12 Q. How did she respond to you?

13 A. She said yes.

14 Q. Why did you ask Ms. Wang if that was her phone?

15 A. Because we had a search warrant for electronics.

16 Q. After Ms. Wang said that that phone was hers, what did you
17 do next?

18 A. I asked her for the passcode.

19 Q. Did she give it to you?

20 A. Yes.

21 Q. What passcode did she give to you?

22 A. All seven, six 7s.

23 Q. And what do you mean by all sevens?

24 A. 777 --

25 THE COURT: One moment, please.

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Direct - Baccari

1 You may proceed.

2 MR. HORTON: Thank you, your Honor.

3 Q. Agent Baccari, you testified that the passcode she gave was
4 all sevens.

5 Can you explain what you mean by that?

6 A. 777777.

7 Q. Before Ms. Wang told you the 777777 passcode, had she asked
8 for a lawyer?

9 A. No.

10 Q. And before Ms. Wang gave you the 777777 passcode, had she
11 told you that she wished to remain silent?

12 A. No.

13 Q. After she give gave you the 777777 passcode, what happened
14 next?

15 A. I asked her about the phones in the kitchen and if they
16 were all hers as well.

17 Q. And where were you when you asked her that?

18 A. In the bedroom.

19 Q. How did she respond to your question about the phones in
20 the kitchen?

21 A. She said that they were all her phones and that she was a
22 refugee of the CCP, and her phones were constantly getting
23 hacked, and that's why she had that many phones.

24 Q. And what did you say -- how did you respond to her
25 discussing all the phones in the kitchen?

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Direct - Baccari

1 A. I just acknowledged it.

2 Q. And what did you do next?

3 A. I asked if Ms. Wang knew where Mr. Miles Guo was that
4 morning.

5 Q. And why did you ask that question next?

6 A. I believe, at that time, we were still unsure where Mr. Guo
7 was with the other operations that were happening that day,
8 simultaneously.

9 Q. Was that the first time you asked her a question other than
10 about her phones?

11 A. I'm sorry. Can you repeat that?

12 Q. Was that the first time you asked her a substantive
13 question other than about her phones?

14 A. I believe so.

15 Q. Did Ms. Wang respond to your question about Miles Guo?

16 A. Yes.

17 Q. How did she respond?

18 A. I believe she just said no or shook her head no.

19 Q. And what did you do next?

20 A. I asked Ms. Wang if she'd like to speak with us, give me a
21 statement.

22 Q. And why did you ask that question then?

23 A. She had been very compliant, and she was speaking, so I
24 thought I could attempt to interview her at that time.

25 Q. And did she respond to you asking if she'd like to speak

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Direct - Baccari

1 with you then?

2 A. Yes.

3 Q. How did she respond?

4 A. She said, I think I'd like to have my attorney.

5 Q. After Ms. Wang said she thinks she'd like to have her
6 attorney. did you have any further substantive conversation
7 with her?

8 A. No.

9 Q. And why not?

10 A. She had invoked at that point, and our focus would have
11 transitioned to processing her, taking her down to transport
12 and process her.

13 Q. And why would your focus change when she had invoked?

14 A. Because she had asked for an attorney at that point.

15 Q. And why would your process change then?

16 A. Because it's not our process to continue to have
17 substantive conversation after someone invokes.

18 Q. Why not?

19 A. Because that's the law of the Miranda rights.

20 Q. Agent Baccari, when you were speaking about the phones with
21 Ms. Wang in her bedroom, what language were you speaking?

22 A. English.

23 Q. And what language was Ms. Wang responding to you in?

24 A. English.

25 Q. Did there come a time that morning, at Ms. Wang's

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1 apartment, when you Ms. Wang provide another passcode, other
2 than the one you mentioned earlier?

3 A. Yes.

4 Q. And what was that second passcode?

5 A. I don't recall the exact passcode.

6 Q. Was it all sevens?

7 A. No.

8 Q. And when did Ms. Wang provide this other passcode?

9 A. I don't recall exactly when the non-sevens passcode was
10 given.

11 Q. To whom did she provide that second passcode?

12 A. Another agent, part of the team that morning.

13 Q. And was that other agent in the room when Ms. Wang had
14 asked you, in her bedroom, for her lawyer?

15 A. I don't believe so; no.

16 Q. When Ms. Wang told you the 777777 passcode, had she already
17 asked you for a lawyer?

18 A. No.

19 Q. When she gave you the 777777s passcode, had she told you
20 she wished to remain silent?

21 A. No.

22 Q. And when you were with Ms. Wang in the hallway at the
23 beginning of that morning, did she ask you for a lawyer there?

24 A. No.

25 Q. And when you were with her in the hallway at the beginning

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Baccari - Cross

1 of that morning, did she tell you that she wished to remain
2 silent?

3 A. No.

4 MR. HORTON: Thank you, your Honor.

5 No further questions.

6 THE COURT: Cross-examination.

7 MR. QUIGLEY: Yes, your Honor. Thank you.

8 CROSS-EXAMINATION

9 BY MR. QUIGLEY:

10 Q. Good morning Agent Baccari.

11 A. Good morning.

12 Q. How are you?

13 A. I'm well. How are you?

14 Q. Good.

15 No question that Ms. Wang asked to speak to an
16 attorney on March 15, 2023?

17 A. That's correct.

18 Q. No question that you asked for her cell phone passcodes on
19 that day; correct?

20 A. That's correct.

21 Q. I want to back up a second to the day before the search, so
22 that would be March 14, 2023?

23 A. Yes.

24 Q. You met with other agents who would be conducting a law
25 enforcement operation that day; correct?

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Baccari - Cross

1 A. Yes, I believe so.

2 Q. And these were other FBI agents; correct?

3 A. Yes.

4 Q. Was Agent Effting there?

5 A. I believe so, but I can't be sure exactly who gave the
6 briefing.

7 Q. What was his role in the investigation?

8 A. Agent Effting is one of the case agents.

9 Q. And was Agent DiMarino there?

10 A. I believe so; yes.

11 Q. What was Agent DiMarino's role in the investigation?

12 A. Agent DiMarino is also a case agent.

13 Q. What's your role in the investigation?

14 A. I am a squad member of the squad in which Agent Effting and
15 Agent DiMarino are a part of.

16 Q. And in fact, Agent DiMarino was the affiant on the search
17 warrant for Ms. Wang's apartment; correct?

18 A. I don't know that offhand.

19 Q. Okay. We can come back to that.

20 Focusing back on this planning meeting on March 14,
21 there was an arrest warrant for Ms. Wang; correct?

22 A. Yes.

23 Q. There was also an arrest warrant for Mr. Kwok; correct?

24 A. Yes.

25 Q. And this was going to, kind of, going to be a complex

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Baccari - Cross

1 operation; correct?

2 MR. HORTON: Objection.

3 MR. QUIGLEY: Okay. I can rephrase, your Honor.

4 Q. You had agents, including yourself, planning to go to
5 Ms. Wang's apartment; correct?

6 A. Yes.

7 Q. You had agents planning to go to a property in Mahwah, New
8 Jersey, to look for Mr. Kwok; correct?

9 A. That's correct.

10 Q. You had agents planning to go to Sherry-Netherland in
11 Manhattan to go look for Mr. Kwok; correct?

12 A. Correct.

13 Q. You had agents going to a residence in Greenwich,
14 Connecticut, to look for Mr. Kwok; correct?

15 A. There were agents going to Connecticut as well. Yes.

16 Q. To look for Mr. Kwok; correct?

17 A. I believe so. Yes.

18 Q. There was a search warrant that was going to be executed in
19 Florida; correct?

20 A. I don't recall that offhand.

21 Q. There was a search warrant that was going to be executed in
22 Staten Island; correct?

23 MR. HORTON: Objection, your Honor.

24 THE COURT: Please step up.

25 (At sidebar; discussion off the record)

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Baccari - Cross

1 THE COURT: Are you objecting because all of this
2 questioning concerning that which proceeded the arrest is not
3 relevant?

4 MR. HORTON: I don't think it's not relevant because
5 it proceed the arrest. My understanding is that it's beyond
6 the scope of the understanding of her knowledge, and I don't
7 think he's established that she had a reason to know what he's
8 talking about.

9 THE COURT: The last question concerned Staten Island.
10 Is that what you're objecting to?

11 MR. HORTON: The line of questioning seemed to be
12 going away from the briefing he was asking her about and into
13 an area she would not be able to answer.

14 MR. QUIGLEY: Your Honor, if she doesn't know, she
15 doesn't know. The point is that there was a lot going on that
16 day and we want to discover her direct knowledge of the search
17 of Ms. Wang's apartment.

18 They're also going to argue inevitable discovery based
19 on materials that were discovered from the apartment, at
20 Mr. Kwok's apartment, so I think it's relevant.

21 I don't have any more questions on this line of
22 evidence. I'm just going to ask about the planning for the
23 actual discovery. I'm about to move on to some more about her
24 intentions in interacting with Ms. Wang and the actual
25 execution of the search of Ms. Wang's apartment.

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Baccari - Cross

1 THE COURT: The objection, on that ground, is
2 overruled, and I'm going to ask the reporter to read the
3 question back to the witness.

4 (In open court)

5 THE COURT: The objection is overruled.

6 Mr. Quigley, would you repeat the question?

7 MR. QUIGLEY: Sure.

8 BY MR. QUIGLEY:

9 Q. There was a search warrant that was planned to be executed
10 in Staten Island also, in connection with this investigation on
11 the morning of March 15; correct?

12 A. I don't recall that.

13 Q. Okay. And the reason that there were teams going to three
14 locations to look for Mr. Kwok was that you weren't sure where
15 he was going to be; correct?

16 A. That's my recollection. Yes.

17 Q. Okay. You were pretty sure where Ms. Wang was going to be;
18 correct?

19 A. Yes.

20 Q. At her apartment in Manhattan.

21 A. Yes.

22 Q. And Mr. Kwok was charged in the indictment at that time?

23 A. I believe so. Yes.

24 Q. And Ms. Wang was charged in a criminal complaint, separate
25 from Mr. Kwok. Are you aware of that?

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Baccari - Cross

1 A. I don't recall the details of their charging documents at
2 this time.

3 Q. Part of the reason somebody would be charged in a complaint
4 as opposed to an indictment with their coconspirators --

5 MR. HORTON: Objection, your Honor. Question.

6 THE COURT: Don't testify.

7 Q. Do you have an understanding of why somebody would be
8 charged in a complaint as opposed to an indictment with their
9 coconspirators?

10 A. I imagine there are multiple reasons why a team would
11 choose to either indict or charge by complaint.

12 Q. Could one reason a person was charged --

13 THE COURT: Don't ask her hypothetical questions.

14 MR. QUIGLEY: Okay.

15 Q. Were you supposed to try to talk to Ms. Wang on the day of
16 her arrest? Was that part of your role?

17 A. Yes.

18 Q. Did you know that she had counsel at that time?

19 A. I don't recall. I don't recall at this time.

20 Q. Okay. This investigation had been going on for time before
21 March 15, 2023; correct?

22 A. Yes.

23 Q. So on the 15th, you go to Ms. Wang's apartment early in the
24 morning; correct?

25 A. Yes.

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Baccari - Cross

1 Q. You couldn't go in before 6 o'clock; correct?

2 A. Correct. Correct.

3 Q. Under Rule 41, you can only go in in the daytime, which
4 starts at 6 o'clock; correct?

5 A. Yes.

6 Q. Fair to say your team didn't begin knocking on the door
7 until 6 a.m.; correct?

8 A. Approximately 6 a.m.

9 Q. And that was the same time that teams were going to the
10 other locations in Connecticut, at the Sherry-Netherland, and
11 in Mahwah; correct?

12 A. I don't recall their times, because I wasn't at those
13 locations.

14 Q. Are you aware that they had any authorization to enter
15 those buildings before 6 a.m.?

16 A. I'm not aware of a nighttime exception.

17 Q. Okay. And that would be an exception; right? A nighttime
18 exception.

19 A. Correct.

20 Q. After you knocked on the door at about 6 a.m., it took
21 Ms. Wang a few minutes to come to the door; correct?

22 A. Yes.

23 Q. In fact, you called or your team called a phone number
24 ending in 7455; right?

25 A. I don't recall the number at this time.

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Baccari - Cross

1 Q. In fact, you called four different phone numbers; right?
2 To try to get her?

3 A. I don't recall how many numbers, but that there was more
4 than one.

5 Q. Can you take a look at 3501-18, page 1.

6 Do you have 3500 up there?

7 A. Not yet.

8 Q. Do you have it?

9 A. Not yet. Oh, I'm sorry. Is it coming on my screen?

10 MR. QUIGLEY: You guys have it? Okay.

11 I know we don't have a jury, but just for the witness
12 and the lawyers.

13 Your Honor, may I approach? Sorry.

14 THE COURT: You may.

15 MR. QUIGLEY: Thanks.

16 Q. Take a look at the bottom paragraph on page 1, and let me
17 know if that refreshes your recollection about how many phone
18 numbers you called before Ms. Wang came to the door.

19 A. Okay.

20 Q. Does that refresh your recollection?

21 A. I see four numbers there. Yes.

22 Q. So you called four numbers before Ms. Wang came to the
23 door?

24 A. I believe that that's what it says there. Yes.

25 Q. Okay. So some time after those numbers are called,

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Baccari - Cross

1 Ms. Wang comes to the door; correct?

2 A. I don't recall the exact timeline of it and whether she
3 came to the door during one of those calls or not, but it was
4 approximately a few minutes after.

5 Q. Well, you didn't call the numbers after she came to the
6 door; correct?

7 A. Not after.

8 Q. Okay. And she was asked to step into the hallway?

9 A. She was taken into custody, yes, and from her apartment
10 door.

11 Q. Okay. So she was brought out into the hallway.

12 A. Yes.

13 Q. And handcuffed.

14 A. I believe she was handcuffed.

15 Q. And she was -- no question she was under arrest at that
16 point; correct?

17 A. Correct.

18 Q. You almost immediately read Ms. Wang her Miranda rights;
19 correct?

20 A. Yes.

21 Q. From a rights card that you had with you?

22 A. Yes.

23 Q. And you indicated her right to have an attorney present for
24 all questions by the authorities; correct?

25 A. Correct.

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Baccari - Cross

1 Q. All right. You told the government a couple of days ago it
2 was "your practice" to do that.

3 Do you recall that?

4 A. Yes.

5 Q. And is that because you weren't -- strike that.

6 And, this was at 6:05 when you Mirandized her;
7 correct?

8 A. Approximately.

9 Q. And at this point, you were definitely taking Ms. Wang into
10 custody, right?

11 A. She was in FBI custody at this point. Yes.

12 Q. This wasn't just an interview; correct?

13 A. No, sir.

14 Q. She was going to go to 26 Federal Plaza to be processed;
15 correct?

16 A. Yes.

17 Q. And then to court; correct?

18 A. Correct.

19 Q. What was she wearing when she first stepped out into the
20 hallway?

21 A. I don't recall exactly what she was wearing.

22 Q. Did she have a bathrobe?

23 A. I don't recall.

24 Q. You intended to take her back into her apartment to help
25 her get dressed; correct?

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Baccari - Cross

1 A. Initially, it was to attempt to speak with Ms. Wang.

2 Q. Well, you couldn't take her to court in her pajamas;
3 correct?

4 A. No.

5 Q. So if she was in her pajamas, she would need to get
6 dressed; correct?

7 A. It would be our practice to make sure that she was dressed
8 for the day.

9 Q. And in fact, that's one of the things that happened after
10 you went inside the bedroom of her apartment; she got dressed;
11 correct?

12 A. At some point; right.

13 Q. Because she wasn't dressed when she came out into the
14 hallway; right?

15 A. I don't recall Ms. Wang being naked when she came to the
16 front door.

17 Q. She was not dressed. She was not dressed in clothes to go
18 to court in; correct?

19 A. I believe that's correct. Yes.

20 Q. Before you could take her back into the apartment, the
21 other agents have to clear the apartment; correct?

22 A. Correct.

23 Q. And that's to make sure there's nothing dangerous in the
24 apartment before you go back in there with Ms. Wang; correct?

25 A. Yes.

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Baccari - Cross

1 Q. And no weapons; correct?

2 A. Correct.

3 Q. No pets; right?

4 A. Not necessarily to ensure that there are no pets, but a law
5 enforcement clear is inclusive of agents just making sure it's
6 clear for individuals to come back in.

7 Q. Okay. And in fact, you would have asked -- after you had
8 arrested Ms. Wang, you would have asked her, are there other
9 people in the apartment; correct?

10 A. I don't recall asking her that.

11 Q. Is that your practice before the agents go in to clear?

12 A. Not always.

13 Q. But you've done it before?

14 A. I may have asked those questions. I think it's very
15 dependent on a number of factors in the situations.

16 Q. But she was being compliant; right?

17 A. Yes. She was compliant.

18 Q. Wouldn't you have wanted to know before the agents went
19 into the apartment if there were pets or other people in the
20 apartment?

21 MR. HORTON: Objection, your Honor.

22 THE COURT: Overruled. You may answer.

23 A. Would we have wanted to know? Yes, but that doesn't
24 necessarily mean we would have asked it. The agents went in as
25 soon as she came out of the apartment.

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Baccari - Cross

1 Q. But you might have asked those questions before the --

2 MR. HORTON: Objection, your Honor.

3 THE COURT: All right.

4 Don't ask all these hypotheticals.

5 MR. QUIGLEY: All right. I'll move on, your Honor.

6 Q. So then the agents went in to do their clearing of the
7 apartment; correct?

8 A. Yes.

9 Q. And they didn't find any other people; right?

10 A. No.

11 Q. They didn't find any weapons; correct?

12 A. I don't recall any weapons. No.

13 Q. No pets, right?

14 A. I don't recall any pets.

15 Q. Okay. They did knock over a vase though.

16 Do you recall that?

17 A. I do not.

18 Q. Do you recall the agents coming back out to ask for a
19 towel, because they had spilled water on the floor?

20 A. I don't recall that right now, as I sit here.

21 Q. It might have happened.

22 MR. HORTON: Objection.

23 THE COURT: Please with the hypotheticals. It's not
24 necessary.

25 MR. QUIGLEY: All right.

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Baccari - Cross

1 Q. You testified, on direct, that you didn't ask Ms. Wang to
2 make a statement in the hallway; right?

3 A. Yeah; correct. I don't recall that.

4 Q. Fair to say that you weren't that positive of that a couple
5 of days ago when you spoke to the AUSAs?

6 A. I'm sorry. Can you ask that again?

7 Q. Isn't it true that you said to the AUSAs a couple of days
8 ago, "don't think I would have asked her in the hallway to make
9 a statement." Correct?

10 A. If that's what I said. I don't recall exactly what I said
11 a couple of days ago.

12 Q. And the reason you said you didn't think you asked her to
13 make a statement is because you weren't 100 percent sure;
14 right?

15 A. No. I believe it's a result of me knowing that my
16 intention was to bring her back inside to attempt to try and
17 speak with her, so there would be no real reason for me to do
18 that outside in the hallway.

19 Q. Okay. Well, one of the -- well, we'll get to that in a
20 second.

21 But she invoked her right to counsel no later than
22 6:15 a.m.; correct?

23 A. Approximately.

24 Q. Within ten minutes of your first interaction with her at
25 about 6:05; correct?

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Baccari - Cross

1 A. Approximately.

2 Q. If we could take a look at 3501-17, it's in the binder

3 MR. HORTON: Objection, your Honor, to showing the
4 witness's exhibit without stating the purpose of showing it to
5 her.

6 THE COURT: If you'll step up, please.

7 (At sidebar; discussion off the record)

8 THE COURT: All righty. What is this?

9 MR. HORTON: So this is a piece of 3500 material from
10 the witness, and my understanding is that it's not been
11 established that there's failure to recall that could justify
12 putting the interview notes that she did it right in front of
13 her. So that's why I objected.

14 THE COURT: These are prepared by whom?

15 MR. HORTON: These are prepared by the witness.

16 MS. SEBBAG: This is not her, is it? Oh, yeah.

17 THE COURT: These notes were prepared by her and you
18 want to show her her notes.

19 Is it that you are claiming that she doesn't recall
20 some of it?

21 MR. QUIGLEY: No, your Honor.

22 I think it shows a record of a temporaneous record of
23 a timeline. This is a preliminary hearing; the Federal Rules
24 of Evidence don't apply. Even still, I'm still just going to
25 through the present-sense impressions of when Ms. Wang invoked.

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Baccari - Cross

1 We can always also attach it to the post-hearing
2 briefing as an exhibit, but it's pretty clear in here that she
3 was Mirandized at 6:05 and that she invoked at 6:15, and I
4 think that timeline is critical.

5 THE COURT: So what's the problem?

6 MR. HORTON: Counsel just said that he was introducing
7 it for the purpose of establishing a present-sense impression.
8 There's no foundation of when this document was created, so I
9 just wanted --

10 MR. QUIGLEY: It's a preliminary hearing on
11 admissibility. The rules of evidence don't apply. We can
12 attach it to the post-hearing brief as an exhibit, but I think
13 it should be in the record, because it establishes that less
14 than -- no more than ten minutes after her first interaction,
15 she invoked her right to counsel.

16 THE COURT: I don't have a problem with her testifying
17 about this document.

18 MR. QUIGLEY: Thank you, your Honor.

19 (In open court)

20 THE COURT: Overruled.

21 You may continue.

22 MR. QUIGLEY: Thank you, your Honor.

23 BY MR. QUIGLEY:

24 Q. Agent Baccari, are you on 3501-17?

25 A. Yes.

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Baccari - Cross

1 Q. I offer this as Defense Exhibit 1.

2 THE COURT: She needs to authenticate the document.

3 Q. Agent Baccari, have you seen this document?

4 A. Yes.

5 Q. What is it?

6 A. My notes from the day, the morning.

7 Q. And these were notes you took on March 15, 2023?

8 A. Yes.

9 MR. QUIGLEY: I'd offer that as Defense Exhibit 1,
10 your Honor.

11 THE COURT: Admitted.

12 (Defendant's Exhibit 1 received in evidence)

13 MR. QUIGLEY: Thank you, your Honor.

14 BY MR. QUIGLEY:

15 Q. Agent Baccari, these notes reflect -- the top line says
16 Yvette Wang; correct?

17 A. Yes.

18 Q. And on the next line below that, it says rights read;
19 correct?

20 A. Yes.

21 Q. And to the left of that, it says, est. 6:05; correct?

22 A. Yes.

23 Q. And that means the estimated time you read her rights was
24 about 6:05 a.m.; correct?

25 A. Correct.

o49FwanH

Baccari - Cross

1 Q. And if you look to the right of that, it says, invoked
2 estimated -- est. 6:15 a.m.; correct?

3 A. Correct.

4 Q. And so that means she invoked her right to counsel at about
5 6:15 a.m.; correct?

6 A. Approximately; yes.

7 Q. And so no more than 10 minutes passed from when you read
8 her her rights to when she invoked her rights to counsel;
9 correct?

10 A. Correct.

11 Q. And once she invoked her right to counsel, all questioning
12 was to cease; correct?

13 A. Well, there are certain things you do have to ask
14 throughout the rest of the morning.

15 Q. Is --

16 A. Substantive questioning.

17 Q. Is the question about her cell phones a substantive
18 question?

19 A. No.

20 Q. It's not. Okay.

21 A. I'm sorry. Can you just repeat the question?

22 Q. Is a question about her cell phones a substantive question,
23 in your view?

24 A. Yes.

25 Q. By the way, it doesn't say on here where she invoked her

o49FwanH

Baccari - Cross

1 right to counsel; correct?

2 A. No.

3 Q. You also told the AUSAs that even if Ms. Wang had invoked
4 her right to counsel, I may still have asked whether the phone
5 was hers because we had a warrant for it.

6 Do you recall telling the AUSAs that?

7 A. Yes.

8 Q. So you might have asked her some questions about the cell
9 phone even after she invoked her right to counsel.

10 MR. HORTON: Objection.

11 THE COURT: I'm going to overrule this.

12 Go ahead. You may answer.

13 A. We had a search warrant for cell phones that belonged to
14 Ms. Wang, so if that took place by myself or other agents, I
15 imagine it would be to clear up if it was her cell phone.

16 Q. So I don't think that was in response to my question.

17 Was that a yes to my question?

18 A. Can you repeat your question again?

19 MR. QUIGLEY: I ask the court reporter to read it
20 back.

21 (Record read)

22 A. I don't recall asking any questions.

23 Q. But you might have.

24 MR. HORTON: Objection.

25 THE COURT: Overruled.

o49FwanH

Baccari - Cross

1 But counsel, you're basing this "might have" on notes.

2 MR. QUIGLEY: Yes, your Honor, of her 3500 material.

3 THE COURT: Fair game.

4 BY MR. QUIGLEY:

5 Q. Agent Baccari, isn't it true you told the agents even if
6 Ms. Wang had invoked her right to counsel, they may still have
7 asked whether the phone was hers?

8 MR. HORTON: Objection, your Honor.

9 THE COURT: Overruled.

10 A. I'm sorry. I told the agent.

11 Q. The AUSAs that?

12 A. Yes. I guess I said that.

13 Q. Okay. The search itself actually began at about 6:18;
14 correct?

15 A. I believe that would have just been when entry photos
16 began.

17 Q. Okay. We can come back to that.

18 Take a look at 3501-05.

19 Do you recognize this, Agent Baccari?

20 A. Yes.

21 Q. What is it?

22 A. The Search 302.

23 Q. I'd offer 3501-05 as Defense Exhibit 2?

24 THE COURT: No objection.

25 MR. HORTON: Can I have one moment, your Honor.

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Baccari - Cross

1 (Counsel conferred)

2 MR. HORTON: No objection, your Honor.

3 THE COURT: It is admitted.

4 (Defendant's Exhibit 2 received in evidence)

5 Q. Agent Baccari, do you see where it says FBI CART Examiner
6 Stepan Shkropak? I hope I'm pronouncing that right.

7 A. Yes.

8 Q. Can you read the line below that?

9 A. Entry photos were taken at approximately 6:18 and the
10 search commenced thereafter.

11 Q. So the search commenced after 6:18; correct?

12 A. That's what that says. Yes.

13 Q. Okay.

14 Ms. Wang remained at the apartment over 40 minutes
15 after the search began; is that correct?

16 A. I don't recall exactly how long she was there.

17 Q. Take a look at 3501-18.

18 And does that refresh your recollection at what time
19 the agents began to transport Ms. Wang to 26 Federal Plaza?

20 A. Can you go to the second page, please.

21 Q. I'm sorry. Yes. First full paragraph on the second page.

22 A. Okay.

23 Q. What time do you begin transporting Ms. Wang to Federal
24 Plaza?

25 A. It says approximately 7 a.m.

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Baccari - Cross

1 Q. So approximately 40 minutes after the search began?

2 A. That's what it says there.

3 Q. And agents were continuing to search the apartment that
4 whole time, between 6:18 and 7 a.m.; correct?

5 A. I don't recall the exact sequence of events. I know there
6 were people in the apartment.

7 Q. Nobody decided to say, let's take a break for breakfast.
8 They were continuing to search; correct?

9 MR. HORTON: Objection, your Honor.

10 THE COURT: Overruled.

11 A. I don't recall exactly when entry photos were completed and
12 the search actually began.

13 Q. But we just saw a document that said, entry photos were
14 taken at 6:18 and the search commenced thereafter; right?

15 A. Yes.

16 Q. So the search commenced at around 6:18; right?

17 MR. HORTON: Objection, your Honor. The document's
18 not in evidence.

19 THE COURT: Overruled. You may answer.

20 A. The entry photos began at 6:18, and some time after that,
21 the search team would have begun officially searching.

22 Q. They found a number of cell phones during the search?

23 A. Yes.

24 Q. And they were asking Ms. Wang questions; correct?

25 A. Who was asking?

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Baccari - Cross

1 Q. The agents, the searching agents.

2 A. I don't recall that.

3 Q. Wouldn't they periodically come into the bedroom to ask
4 Ms. Wang questions?

5 A. I don't know I'd say "periodically."

6 Q. Would they come into the bedroom to ask Ms. Wang questions?

7 A. I recall an instance.

8 Q. Did you tell anyone she'd invoked her right to counsel; we
9 can't talk to her?

10 A. I don't recall when that happened, if it happened before or
11 after Ms. Wang invoked.

12 THE COURT: I'm sorry. Are you saying you don't
13 recall -- what is it that you're saying you don't recall
14 happened?

15 A. An agent asking Ms. Wang a question.

16 Q. Well, we've established that the search didn't begin until
17 at least 6:18; correct?

18 A. The entry photos began then.

19 Q. And the search, if anything began after; right?

20 A. Correct.

21 Q. And Ms. Wang invoked at 6:15, correct?

22 A. Approximately.

23 Q. When you were in the bedroom with Ms. Wang, you were with
24 her the whole time; correct?

25 Let me rephrase that.

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Baccari - Cross

1 When Ms. Wang was in the bedroom of her apartment, you
2 were not with her the whole time; correct?

3 A. The entire time she was in the apartment?

4 Q. The entire 40 minutes plus that she was in the apartment,
5 you were not in the bedroom with her the whole time; correct?

6 A. No. I don't believe I was.

7 Q. Because you were going in and out to check the status of
8 these other operations; correct?

9 A. I could have been, yes.

10 Q. In fact, at some point, you went to the Sherry-Netherland
11 that morning; right?

12 A. I did go that day, not that morning.

13 Q. Fair enough.

14 And you wrote an FBI Form 302 relating to this search;
15 correct?

16 A. Related to the search?

17 Q. Yeah, related to the operation at Ms. Wang's apartment.

18 A. Yes.

19 Q. So, I'd like to show the witness 3501-16.

20 THE COURT: Okay.

21 Q. Do you recognize this, Agent Baccari?

22 A. Yes.

23 Q. And what is it?

24 A. A 302 regarding Ms. Wang.

25 Q. I'd offer this as Defense Exhibit 3.

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Baccari - Cross

1 THE COURT: No objection?

2 MR. HORTON: No objection.

3 THE COURT: It is admitted.

4 Q. First focus on the first paragraph of this document? The
5 first two sentences of this document occur in chronological
6 order; correct?

7 A. Yes.

8 Q. Right, the first sentence talks about how she was arrested
9 and located; right?

10 A. Correct.

11 Q. And the second sentence says after the arrest, agents
12 cleared the residence; right?

13 A. It says that, yes.

14 Q. Correct. So the second sentence came after the first
15 sentence in time; correct?

16 A. Yes.

17 Q. And then the third sentence talks about how after the
18 residence was cleared, Ms. Wang was taken to a bedroom area;
19 correct?

20 A. Correct.

21 Q. And so the third sentence comes after the second sentence;
22 correct?

23 A. Yes.

24 THE COURT: So, Mr. Quigley, are you asking whether
25 the third sentence follows in sequence after the second

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Baccari - Cross

1 sentence?

2 MR. QUIGLEY: I'm sorry. I will rephrase.

3 THE COURT: Yes.

4 BY MR. QUIGLEY:

5 Q. In terms of the time these events occurred, the first three
6 sentences of this document all follow the order in which the
7 time these events occurred; right?

8 A. Yes.

9 Q. The first sentence happened first, right? The second
10 sentence happened second; right? Correct?

11 MR. HORTON: Objection, your Honor.

12 THE COURT: Overruled. You may answer.

13 A. Wait a minute. To say things happened one, two, three, I
14 just want to be clear in -- that happened relatively in
15 chronological order to what you're saying.

16 THE COURT: So he is asking you whether this document
17 states the exact sequence of events. At least that's my
18 question. You may answer my question.

19 THE WITNESS: The entire document or --

20 THE COURT: Whether the first three sentences that he
21 has been discussing, does that state the exact sequence of
22 events as it occurred in chronological order or does it not.

23 THE WITNESS: It is in relatively chronological order,
24 yes.

25 THE COURT: I don't understand what "relatively"

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Baccari - Cross

1 means.

2 THE WITNESS: I don't recall if there were other
3 things that were happening in addition to those three sentences
4 but those three sentences are in chronological order.

5 BY MR. QUIGLEY:

6 Q. In the fourth sentence beginning: Wang advised the
7 cellular phone..., that happened after you were back in the
8 apartment; right? According to this?

9 A. Yes.

10 Q. And then the fifth sentence, the fifth sentence reflects,
11 with a semi colon in the middle, that she was asked, in
12 substance, whether she would like to provide a statement and it
13 says: Wang advised at that point she would like to have her
14 lawyer present. Correct?

15 A. That's what it says, yes.

16 Q. And then below that in the next paragraph, second sentence,
17 it says: Wang provided the phone's passcodes; right?

18 A. That's what it says, yes.

19 Q. And then below that it includes other information that
20 Ms. Wang relayed to you that morning; correct?

21 A. Correct.

22 Q. OK. You can take that down.

23 You mentioned on direct you thought another agent --
24 you asked her about, what you described as sevens passcodes.
25 Do you recall that?

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Baccari - Cross

1 A. I'm sorry. Can you rephrase that question?

2 Q. Sorry.

3 You testified when Mr. Horton was examining you that
4 she provided you with some sevens passcodes as you described;
5 right?

6 A. A passcode that includes sevens.

7 Q. Right. And then you testified that another agent later on
8 asked her about another phone that had a different passcode;
9 right?

10 A. I recall that, yes.

11 Q. OK. And do you remember telling the AUSAs last week that
12 you think that you're not as confident that she provided the
13 non-sevens passcode before invocation?

14 A. I'm sorry. Can you say that again?

15 Q. Do you remember telling the prosecutors last week that you
16 were, quote, not as confident that she provided that non-sevens
17 passcode before invocation?

18 A. Yes, I recall saying that.

19 Q. And do you recall also telling the AUSAs last week that you
20 think more than likely she invoked Agent Cayman with the phone
21 and I left to go make calls or talked to search TL?

22 Do you recall telling the AUSAs that last week?

23 A. I don't recall saying it like that, no.

24 Q. Take a look at 3501-1 and look at the bottom paragraph and
25 the very last sentence. Does that refresh your recollection

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Baccari - Cross

1 that you told the AUSAs that?

2 A. I don't recall saying it exactly like that but that's what
3 it says there.

4 Q. OK. It says: Think more than likely she invoked Agent
5 Cayman with phone and I left to go make calls. Right?

6 A. That's what it says, yes.

7 Q. And you didn't say to any other agent --

8 MR. HORTON: Objection.

9 Q. -- government, she revoked her right to counsel, we can't
10 question her?

11 THE COURT: Please step up.

12 (Continued next page)

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Baccari - Cross

1 (At sidebar; discussion off the record)

2 THE COURT: For my edification, the document that
3 we're looking at is one authored by the witness.

4 MR. QUIGLEY: Those are notes of her prep with the
5 prosecutors. Those are the prosecutor's notes of her prep.

6 THE COURT: Those are the prosecutor's notes. Okay.
7 And the objection?

8 MR. HORTON: The objection is that he's reading from a
9 document that's not in evidence. It's refreshing a witness's
10 recollection, and that's one thing. And after that, he is
11 reading from the document. It is not evidence. The witness
12 didn't offer and she did not adopt it.

13 THE COURT: All right. The objection is sustained.

14 (In open court)

15 BY MR. QUIGLEY:

16 Q. Did you review these notes before testifying today?

17 A. No.

18 Q. When the other agent asked her for the non-sevens password,
19 did you say to him or her that Ms. Wang had already invoked her
20 right to counsel?

21 A. I don't recall that.

22 Q. Do you recall telling any other agents on the scene on
23 March 15, 2023, that Ms. Wang had invoked her right to counsel?

24 A. I don't recall specifically how that information was
25 relayed to other individuals there.

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Baccari - Cross

1 Q. You don't recall relaying it, though?

2 A. I didn't say that. I just don't recall exactly how that
3 information would have been relayed to the other agents that
4 were there that day.

5 Q. Do you recall relaying it?

6 A. I believe so, because the next step was to begin the
7 process for transport and that was as a result of her invoking.

8 Q. Even though she stayed at the scene for 45 minutes after
9 she invoked her right to counsel?

10 A. Yes.

11 Q. OK. You said you were the squad leader for the search?

12 A. The squad leader?

13 Q. Were you the squad leader for this search? Was that
14 your --

15 A. I was a member of the squad on this search.

16 Q. There was a lot going on that day; right?

17 A. There were a lot of operations happening that day.

18 Q. And are you aware that this search has already required the
19 government to make one corrective disclosure to the Court about
20 where items were found in Ms. Wang's apartment?

21 MR. HORTON: Objection, your Honor.

22 THE COURT: Sustained.

23 MR. QUIGLEY: I have no further questions, your Honor.

24 THE COURT: Redirect.

25 REDIRECT EXAMINATION

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Baccari - Redirect

1 BY MR. HORTON:

2 Q. Agent Baccari, I want to discuss the 777777 password.

3 A. OK.

4 Q. Before Ms. Wang gave you that 777777 passcode, had she
5 asked you for a lawyer?

6 A. No.

7 Q. Where did you read Ms. Wang her rights?

8 A. In the hallway outside her apartment door.

9 Q. Did she ask you for a lawyer in the hallway?

10 A. No.

11 Q. Did she say that she wished to remain silent in the
12 hallway?

13 A. She did not.

14 MR. HORTON: May I have a moment, your Honor?

15 THE COURT: OK.

16 (Counsel conferring)

17 MR. HORTON: Thank you, Agent. We have no further
18 questions.

19 THE COURT: Recross?

20 MR. QUIGLEY: No recross, your Honor. Thank you.

21 THE COURT: Thank you, Ms. Baccari.

22 THE WITNESS: Thank you, your Honor.

23 THE COURT: You may call your next witness.

24 MR. HORTON: Government calls Special Agent Jessica
25 Cardenas.

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Cardenas - Direct

1 JESSICA CARDENAS,

2 called as a witness by the GOVERNMENT,

3 having been duly sworn, testified as follows:

4 THE COURT: State your name and spell it.

5 THE WITNESS: Jessica Cardenas. J-E-S-S-I-C-A,
6 C-A-R-D-E-N-A-S.

7 THE COURT: You may inquire.

8 MR. HORTON: Thank you, your Honor.

9 DIRECT EXAMINATION

10 BY MR. HORTON:

11 Q. Good afternoon, Agent Cardenas.

12 A. Good afternoon, sir.

13 Q. Where do you work?

14 A. The Federal Bureau of Investigation, New York office.

15 Q. And what is your title at the FBI?

16 A. Special agent.

17 Q. How long have you been a special agent?

18 A. 18 years.

19 Q. And are you currently assigned to any particular part of
20 the FBI?

21 A. Yes.

22 Q. Which part is that?

23 A. The Computer Analysis Response Team.

24 Q. Is that also called CART?

25 A. Yes.

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Cardenas - Direct

1 Q. What is the Computer Analysis Response Team?

2 A. We provide technical support to the New York office,
3 specifically digital forensics for investigations.

4 Q. Can you describe the scope of your job responsibilities
5 there?

6 A. I provide assistance in identifying, collecting, and
7 preserving digital evidence.

8 Q. Do you help execute search warrants?

9 A. Yes.

10 Q. And what is your role at the execution of a search warrant?

11 A. Again, identifying, assisting with the collection, and the
12 preservation of digital items.

13 Q. Did there come a time that you participated in a search of
14 a premises belonging to Miles Guo?

15 A. Yes.

16 Q. And when was that search?

17 A. March 15, 2023.

18 Q. What name, if any, did CART use to refer to the CART case
19 relating to that search?

20 A. I don't understand your question.

21 Q. Was there a name that was used at CART to refer to the
22 investigation that that search was a part of?

23 A. Yes, I'm sorry: GTV.

24 Q. Where did the search you participated in take place?

25 A. 781 Fifth Avenue, 18th floor.

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Cardenas - Direct

1 Q. What kind of building is 781 Fifth Avenue?

2 A. Hotel and residential.

3 Q. Where inside that building did the search take place?

4 A. 18th floor penthouse.

5 Q. And how did you first arrive at that penthouse that day?

6 A. My government vehicle.

7 Q. And where did you go when you arrived?

8 A. Initially after parking the vehicle, I was stationed in the
9 lobby.

10 Q. Where did you go from there?

11 A. There was -- approximately 15 minutes after the execution
12 of the operation, there was a radio call for additional agents
13 to come up to the penthouse and that's when I went up.

14 Q. How did you get up there from the lobby?

15 A. The elevator.

16 Q. And what did you see when the elevator opened?

17 A. When the elevator doors opened I noticed that there was two
18 individuals that were in custody, being held in custody by FBI
19 agents, and there was a table with cell phones on them.

20 Q. Was this all in one room?

21 A. Yes. It was the foyer area before you enter the penthouse.

22 Q. And who were the two individuals you testified you saw in
23 custody?

24 A. Miles Guo and his assistant Jason.

25 Q. What did you do after you came out of the elevator?

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Cardenas - Direct

1 A. I went to the table and I picked up the cell phones.

2 Q. And what did you do next?

3 A. I placed the cell phones in airplane mode; ensured that
4 wi-fi was disabled and bluetooth was disabled.

5 Q. And who else was in that room with you then?

6 A. I remember Special Agent Nicholas DeMarino and there was
7 several other agents but I don't recall their names.

8 Q. After you placed the cell phones in airplane mode, what did
9 you do next?

10 A. I waited until the penthouse was cleared and entered the
11 penthouse and assisted with the search.

12 Q. What, if anything, did you ask anybody about the cell
13 phones?

14 A. I asked for the passcode.

15 Q. And who did you ask?

16 A. I just directed the question to the room to everyone that
17 was in the foyer area.

18 Q. Did anybody answer your question?

19 A. Yes.

20 Q. Who answered your question?

21 A. The first one to answer was Miles Guo.

22 Q. And what did he say the passcode was?

23 A. 777777.

24 Q. And did anybody else answer your question?

25 A. After I placed the first cell phone in airplane mode I

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Cardenas - Direct

1 went -- I picked up the second phone and, again, I directed the
2 question to the room: What is the passcode?

3 Q. And did anybody respond?

4 A. Yes.

5 Q. And who responded?

6 A. Jason.

7 Q. How did he respond?

8 A. Provided the passcode; 777777.

9 Q. And how many phones did those passcodes pertain to, as far
10 as you knew in that moment?

11 A. Three.

12 Q. Did you participate in any other premises searches that
13 day?

14 A. Just the penthouse on the 18th floor.

15 Q. Agent Cardenas, what other work, if any, did you do on the
16 GTV case?

17 A. I processed some of the evidence from the other search
18 locations.

19 Q. And how, if at all, did CART examiners share information
20 with each others during a review?

21 A. At times via electronic communication or conversation --
22 verbal conversation.

23 Q. And what sorts of things are discussed?

24 A. Passcodes, passwords for devices.

25 Q. Did there come a time that another examiner asked you about

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Cardenas - Cross

1 passcodes in the GTV case?

2 A. Yes.

3 Q. Can you describe that situation for the Court?

4 A. I was just walking in the squad area and I observed two I
5 Mac computers that I recognized what I thought were from the
6 penthouse, so I went into a cubicle area -- my co-worker's
7 cubicle area and I asked how things were going with the
8 devices. And she said she was unable to access them because
9 she didn't have the password.

10 Q. And how did you respond?

11 A. I said I believed that those were computers from the GTV
12 search at the penthouse and she should try the passcode.

13 Q. And which passcode did you suggest she try?

14 A. 777777.

15 Q. Based on your participation in the GTV device review, was
16 that the only password you were aware of in that case?

17 A. Yes.

18 MR. HORTON: If I can have one moment, your Honor?

19 (Counsel conferring)

20 MR. HORTON: Thank you. We have no further questions.

21 THE COURT: Cross-examination.

22 MR. QUIGLEY: Yes, your Honor.

23 CROSS-EXAMINATION

24 BY MR. QUIGLEY:

25 Q. Good morning, Agent Cardenas.

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Cardenas - Cross

1 A. Good afternoon, sir.

2 Q. It is good afternoon.

3 Just to be clear, Ms. Wang wasn't at the
4 Sherry-Netherlands that day; correct?

5 A. Ms. Wang? I don't know Ms. Wang.

6 Q. The only people you saw were Mr. Kwok and his assistant
7 Jason; correct?

8 A. That were non-FBI personnel; correct.

9 Q. And you testified that you asked about the passwords for
10 their cell phones; correct?

11 A. Passcodes?

12 Q. Did you ask anyone whether they'd invoked their right to
13 counsel before you asked them those questions?

14 A. No.

15 Q. You also testified about a meeting with another examiner.
16 Was that at 26 Federal Plaza?

17 A. Yes.

18 Q. When was that?

19 A. I couldn't tell you. It was several days after the search.

20 MR. QUIGLEY: No further questions, your Honor. Thank
21 you.

22 THE COURT: What is the difference between password
23 and passcode?

24 THE WITNESS: Passcode, your Honor, is usually
25 indicative of all digits; a password can be alphanumeric, in my

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Volchko - Direct

1 experience.

2 THE COURT: Redirect?

3 MR. HORTON: Nothing further from us, your Honor.

4 THE COURT: Thank you. You may step out.

5 (Witness excused)

6 THE COURT: The government may call its next witness.

7 MR. HORTON: Government calls Digital Forensic
8 Examiner Jessica Volchko.

9 JESSICA VOLCHKO,

10 called as a witness by the Government,

11 having been duly sworn, testified as follows:

12 THE COURT: Please state your name and spell it.

13 THE WITNESS: Jessica Volchko. J-E-S-S-I-C-A,
14 V-O-L-C-H-K-O.

15 THE COURT: You may inquire.

16 MR. HORTON: Thank you, your Honor.

17 DIRECT EXAMINATION

18 BY MR. HORTON:

19 Q. Good afternoon, Ms. Volchko.

20 A. Good afternoon.

21 Q. Where do you work?

22 A. I work for the Federal Bureau of Investigation, which is
23 also known as the FBI.

24 Q. Do you work for any particular part of the FBI?

25 A. The Computer Analysis Response Team, which is also known as

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Volchko - Direct

1 CART.

2 Q. And how long have you worked with CART?

3 A. Approximately eight years.

4 Q. What were you doing before you were doing CART?

5 A. I was an intern for the FBI.

6 Q. And what were you doing before that?

7 A. I was in college.

8 Q. And did you graduate with a degree?

9 A. I did.

10 Q. What was your degree in?

11 A. I have a bachelor of science in digital forensics.

12 Q. What is your current title at CART?

13 A. I am a digital forensic examiner.

14 Q. Was that your title when you joined?

15 A. When I joined I was a digital forensic examiner trainee.

16 Q. And what kind of training have you received at CART?

17 A. Part of the CART certification process, we have a variety
18 of training in computers and cell phones to essentially
19 complete the certification process, and then once we are
20 complete with our training, we become a certified digital
21 forensic examiner.

22 Q. And are you certified?

23 A. I am.

24 Q. Do you supervise any other personnel at CART?

25 A. I wouldn't say supervise, but I am a coach to a trainee

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Volchko - Direct

1 currently.

2 Q. Do you ever oversee the work of anybody else at CART?

3 A. I oversee my trainee's work.

4 Q. Do you ever review anybody else's work?

5 A. I have.

6 Q. Did there come a time that you participated in a device
7 review for a case that was referred to in CART as GTV?

8 A. Yes.

9 Q. And what role, if any, did you have in that case?

10 A. I had an administrative role and also an examination role.

11 Q. And taking you to those, what did the administrative role
12 entail?

13 A. That was just coordination back and forth with the case
14 agents; kind of discussing deadlines, receiving some of the
15 CART requests, and assigning those to other examiners.

16 Q. And what sorts of things did you communicate with the
17 agents about?

18 A. Just the volume of data, if there were any deadlines in
19 producing extractions and reports, and potential PINs and
20 passwords.

21 Q. Is that a typical communication with agents in a CART case?

22 A. Yes.

23 Q. Are you familiar with something called CART examination
24 notes?

25 A. I am.

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Volchko - Direct

1 Q. And how are you familiar with them?

2 A. They are notes that I take, as well as other examiners,
3 during the course of our examination.

4 Q. And, generally speaking, what do CART examination notes
5 say?

6 A. Examination notes document the items that the case agent is
7 requesting be examined, and then the steps that are taken to
8 examine those devices.

9 Q. And how does a CART examiner fill out examination notes?

10 A. During the exam they will document what they are doing as
11 they're working on the devices.

12 Q. Are examination notes shared within CART?

13 A. They can be.

14 Q. And for what purposes can they be shared?

15 A. Just for review, for if a question comes up and another
16 examiner needs to answer the question and someone is out of the
17 office, we can reference notes.

18 Q. Is there a part of CART called a Mobile Device Unlock
19 Service?

20 A. Yes.

21 Q. Is that also called MDUS or MBUS?

22 A. Yes.

23 Q. And what does MDUS do?

24 A. MDUS is a request for either an unlock of a mobile device
25 or an advanced extraction of a mobile device.

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Volchko - Direct

1 MR. HORTON: Ms. Loftus, can you please show the
2 witness what has been marked for identification as Government
3 Exhibit 5?

4 Q. Ms. Volchko, can you see that?

5 A. Yes.

6 Q. Do you recognize Government Exhibit 5?

7 A. I do.

8 Q. And what is it?

9 A. These are my examination notes for a request.

10 Q. Do these notes concern some of the devices that were seized
11 from Yangpin Wang's apartment in March 2023?

12 A. These are devices that were received from an apartment on
13 68th Street.

14 MR. HORTON: Your Honor, the government offers
15 Government Exhibit 5.

16 MR. QUIGLEY: No objection, your Honor.

17 THE COURT: It is admitted.

18 (Government's Exhibit 5 received in evidence)

19 BY MR. HORTON:

20 Q. Do CART examination notes say anything about how a device
21 was accessed by an examiner?

22 MR. HORTON: Ms. Loftus, if you can navigate to page 3
23 of this document, please? Thank you.

24 Q. Ms. Volchko, looking at the gray bar with text that starts
25 with 1B17 in the top middle of the page, what does this section

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Volchko - Direct

1 of the document describe?

2 A. The section is the steps that I took to examine evidence
3 item 1B17.

4 Q. And in the cell it is titled Mobile Device Examination,
5 just looking down sort of three paragraphs: It says device not
6 locked with a PIN.

7 What does that mean?

8 A. That means that when I received the device and powered it
9 on, there wasn't a user lock enabled so I was able to unlock
10 the phone without the use of a user's PIN and access the
11 settings and see the content of the device.

12 MR. HORTON: And looking now at the bottom of this
13 page 3, going into the top of page 4, Ms. Loftus, if you could
14 navigate the document, please? Thank you.

15 Q. Directing you to where it says, just above the page cut:
16 MDUS results, and then at the top of the next page: Full file
17 system extraction. What is a full file system extraction?

18 A. That's a complete extraction of a mobile device. It is
19 essentially the best extraction we can get from an iPhone.

20 Q. And what does this box here indicate about this particular
21 device?

22 A. This indicates that a full extraction was completed.

23 THE COURT: What does an MDUS stand for?

24 A. Mobile Device Unlock Service.

25 MR. HORTON: Ms. Loftus, if you could please display

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Volchko - Direct

1 the first page again of GX- 5? Thank you.

2 Q. Ms. Volchko, directing you now to the text box that is
3 titled: Legal Authority Review. Do you see that?

4 A. Yes.

5 Q. What does this box indicate?

6 A. This indicates that the legal authority for this request
7 was a search warrant, and this is the information that was
8 reviewed in the search warrant.

9 MR. HORTON: Ms. Loftus, can you please show the
10 witness what's been marked as Government Exhibit 26?

11 Q. Can you see this document, Ms. Volchko?

12 A. Yes.

13 Q. Do you recognize it?

14 A. I do.

15 Q. And what is it?

16 A. This is the search warrant that I reviewed for this CART
17 request.

18 Q. Is there an address on the search warrant?

19 A. Yes.

20 Q. Does it correspond with the address on your examination
21 notes?

22 A. It does.

23 MR. HORTON: Ms. Loftus, could you please go to page 6
24 of Government Exhibit 26?

25 Q. Ms. Volchko, directing your attention to the paragraph

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Volchko - Direct

1 that's titled: C. Unlocking electronic devices. What does
2 this paragraph mean?

3 A. This enables using biometrics, so that could be a face ID
4 or a fingerprint to unlock mobile devices.

5 Q. Generally speaking, what are biometrics?

6 A. They are features that the user has that they can use to
7 unlock the phone, so some of the most common are fingerprints
8 or their face.

9 Q. And what does this paragraph on the warrant allow law
10 enforcement to do?

11 MR. QUIGLEY: Objection. Calls for legal conclusion.

12 THE COURT: If you will step up?

13 (Continued on next page)
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Volchko - Direct

1 (At sidebar; discussion off the record)

2 THE COURT: Mr. Quigley, I did not catch what you
3 said.

4 MR. QUIGLEY: Sorry. I just said it calls for a legal
5 conclusion. He's asking her to interpret a document that she
6 didn't write, but he hasn't offered it in evidence.

7 MR. HORTON: She testified that she read that as part
8 of the mobile device review. I'm happy to ask her what she
9 understood it to be.

10 THE COURT: What portion are we talking about?

11 MR. HORTON: There's a portion of the warrant that
12 authorizes law enforcement to use biometrics. She reviewed
13 that warrant and she reviewed that paragraph, and I'd just like
14 to ask her what she understands it means.

15 MR. QUIGLEY: Biometrics, your Honor, it's like
16 opening up --

17 THE COURT: I'm proud to say I do understand.

18 MR. QUIGLEY: I think "what's your understanding"
19 would be objectionable. What does that mean is --

20 MR. HORTON: We're happy to rephrase.

21 THE COURT: Okay.

22 MR. HORTON: Thank you, your Honor.

23 MR. QUIGLEY: Thank you, your Honor.
24
25

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Volchko - Direct

1 (In open court)

2 THE COURT: You will rephrase the question.

3 BY MR. HORTON:

4 Q. Ms. Volchko, did you read this warrant before you began the
5 device review?

6 A. I did.

7 Q. And what is your understanding of what this paragraph
8 means?

9 A. It allows law enforcement to use search biometric features
10 to unlock a device in lieu of using a PIN.

11 Q. Ms. Volchko, have you previously reviewed the documents
12 that have been premarked as Government's Exhibits 6, 7, 8, 21
13 and 27?

14 A. I have.

15 Q. And are those documents CART examination notes and MDUS
16 report for devices seized at the same address you have been
17 testifying about this morning?

18 A. Yes.

19 MR. HORTON: Your Honor, the Court would offer
20 Government's Exhibits 6 through 8, 21, and 27.

21 MR. QUIGLEY: No objection.

22 THE COURT: They are admitted.

23 (Government's Exhibits 6, 7, 8, 21 and 27 received in
24 evidence)

25 BY MR. HORTON:

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Volchko - Direct

1 Q. Ms. Volchko, did you review a summary chart of devices that
2 were obtained in connection with the GTV case prior to your
3 testimony today?

4 A. I have.

5 MR. HORTON: Ms. Loftus, can you please show the
6 witness what has been marked Government Exhibit S-1.

7 Q. Can you see that document, Ms. Volchko?

8 A. I can.

9 Q. Did you compare the information in the summary chart with
10 the information that's contained in Government's Exhibits 5
11 through 8, 21, and 27?

12 A. I did.

13 Q. And does this chart accurately summarize information from
14 those exhibits?

15 A. Yes.

16 MR. HORTON: The government offers Government Exhibit
17 S-1, your Honor.

18 MR. QUIGLEY: No objection.

19 THE COURT: It is admitted.

20 (Government's Exhibit S-1 received in evidence)

21 BY MR. HORTON:

22 Q. Ms. Volchko, the column on the far right, the FBI's means
23 of access. What information does that provide about the
24 devices on this chart?

25 A. That information is how the PIN was obtained or used to

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Volchko - Direct

1 unlock the device.

2 Q. And were the first five devices on this list accessed with
3 a PIN?

4 A. The second one was.

5 Q. Was it accessed by entering the PIN?

6 A. No, it was accessed by brute forcing the pin.

7 THE COURT: What does that mean?

8 THE WITNESS: That means that a series of PINs can be
9 used to test against the device until one is successful in
10 unlocking the device.

11 BY MR. HORTON:

12 Q. Ms. Volchko, what is a passcode?

13 A. A passcode is -- it can be digits, it can be alphanumeric,
14 and it is used to unlock or protect a device.

15 Q. Can that also be referred to as a PIN?

16 A. It can.

17 Q. And how, if at all, are PINs relevant to the FBI's analysis
18 of electronic devices?

19 A. Depending on the state of the device, if it's received
20 powered on or powered off and depending on the type of
21 encryption on the device, we may need to use the PIN to access
22 the data.

23 Q. And based on your training and experience at CART, are you
24 familiar with the concept of a passcode list?

25 A. Yes.

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Volchko - Direct

1 Q. And what is your understanding of a passcode list?

2 A. These are potential PINs that can be compiled by
3 investigators either from other digital evidence items, just
4 observing them from search warrants, and they can compile a
5 list of PINs or passwords to test on the devices.

6 Q. And then who uses those passcode lists?

7 A. CART can use those to upload to one of our tools -- one of
8 our advanced extraction tools to attempt those PINs first.

9 Q. In your eight years of experience at CART, approximately
10 how common -- well, how commonly are passcode lists used in
11 device reviews?

12 A. They're often used.

13 MR. HORTON: Ms. Loftus, can you please show the
14 witness what is marked as Government Exhibit 2?

15 Q. Ms. Volchko, do you recognize this document?

16 A. I do.

17 Q. And what is it?

18 A. This is an e-mail I received from one of the case agents.

19 MR. HORTON: The government would offer Government
20 Exhibit 2.

21 MR. QUIGLEY: No objection.

22 THE COURT: It is admitted.

23 (Government's Exhibit 2 received in evidence)

24 BY MR. HORTON:

25 Q. Ms. Volchko, what is the subject line of this e-mail?

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Volchko - Direct

1 A. GTV - Last warrant and potential passwords/PINs.

2 Q. Can you please look down at list of the last bulleted items
3 in the e-mail, it says for PINs, please try all 7s to start
4 with?

5 A. Yes.

6 Q. What, if anything, was your understanding at the time you
7 received this e-mail of what that meant?

8 A. If a device was locked with a PIN and we were unable to
9 extract the data without the PIN, to attempt that PIN to unlock
10 the device.

11 Q. Up on the attachments line, the first one is: GTV Summary
12 of Potential Passwords and PINs. It is an Excel file. Have
13 you seen that document?

14 A. I have.

15 Q. What is it?

16 A. That was a password list of potential passwords and PINs.

17 MR. HORTON: Ms. Loftus, can you please show the
18 document marked Government Exhibit 2A?

19 Q. Ms. Volchko, is this the document that was attached to the
20 e-mail we were just looking at?

21 A. Yes.

22 MR. HORTON: The government would move to offer
23 Government Exhibit 2A.

24 MR. QUIGLEY: No objection.

25 THE COURT: It is admitted.

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Volchko - Direct

(Government's Exhibit 2A received in evidence)

MR. HORTON: Ms. Loftus, can you please navigate to the middle tab that is marked: PINs.

BY MR. HORTON:

Q. Ms. Volchko, what is this table?

A. This is a table of potential PINs.

MR. HORTON: Ms. Loftus, can you please show the witness what is marked as Government Exhibit 4?

Q. Ms. Volchko, do you recognize this document?

A. I do.

Q. And what is it?

A. This is an e-mail communication between myself and the case agent.

MR. HORTON: The government offers Government Exhibit 4.

MR. QUIGLEY: No objection.

THE COURT: It is admitted.

(Government's Exhibit 4 received in evidence)

BY MR. HORTON:

Q. Generally speaking, what information does this e-mail reflect?

A. This is a communication discussing whether to attempt potential PINs on the devices.

MR. HORTON: Ms. Loftus, can you navigate to the second page? Thank you.

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Volchko - Direct

1 Q. And looking at your e-mail here at the bottom, you write:
2 We currently don't have brute force support for 1B16 and 1B18.
3 What do those two alphanumeric phrases refer to?

4 A. 1B16 and 1B18 are evidence item numbers.

5 Q. Are they phones?

6 A. Yes.

7 Q. The next sentence says: Both devices were seized from 188
8 East 64th Street, apartment 1601. Please advise if you would
9 like me to attempt 777777 for both devices.

10 Ms. Volchko, why did you suggest that PIN?

11 A. Because it was in the potential PINs and there were also
12 conversations about attempting that PIN first.

13 Q. And who were those conversations with, the case agents?

14 MR. HORTON: If I can have one moment, your Honor?

15 (Counsel conferring)

16 INTERPRETER: I'm sorry. This is the interpreter
17 speaking, counsel, and your Honor. If you could slow it down
18 for the interpretation, please, a little bit? Thank you.

19 MR. HORTON: Ms. Loftus, can you please pull up
20 Government Exhibit S-1 one more time?

21 BY MR. HORTON:

22 Q. Ms. Volchko, for the devices from 1B15 to the bottom of the
23 summary chart, was the PIN 777777 used to gain access to those
24 phones?

25 A. That's correct.

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Volchko - Cross

1 MR. HORTON: No further questions.

2 THE COURT: Cross-examination.

3 MR. QUIGLEY: Sure. Thank you, your Honor.

4 Can we leave that exhibit up?

5 CROSS-EXAMINATION

6 BY MR. QUIGLEY:

7 Q. Good afternoon, Ms. Volchko.

8 A. Good afternoon.

9 Q. Just referring to Government Exhibit S-1, directing your
10 attention to the right-hand column: FBI's means of access.
11 You testified about biometrics on direct. Do you recall that?

12 A. I do.

13 Q. None of these devices were accessed via biometrics,
14 correct?

15 A. I don't believe so.

16 Q. It certainly doesn't reflect that on this summary chart;
17 correct?

18 A. That's correct.

19 Q. And you don't know whether the FBI even attempted to use
20 biometrics to access any of these devices; correct?

21 A. Possibly one of the items that I reviewed.

22 Q. But you don't know?

23 A. Just based on the state of the device when I received some
24 of the items.

25 Q. It hadn't been extracted. That item had not been

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Volchko - Cross

1 extracted, yet, correct, when you received it?

2 A. I'm sorry. Can you -- I'm not understanding the question.

3 Q. You received a device that you believed the FBI attempted
4 to access biometrically; correct?

5 A. That, I can't state yes or no if it was accessed.

6 Q. OK. Fair enough.

7 I want to take a look at GX- 4, Government's
8 Exhibit 4. If you can go to the second page?

9 You tell Agent Effting that we don't have currently
10 have brute force to support for 1B16 and 1B18; correct?

11 A. That's correct.

12 Q. And those were items seized from the 64th Street apartment;
13 correct?

14 A. That's correct.

15 Q. These were not seized from Mahwah; correct?

16 A. That's correct.

17 Q. They were not seized from the Sherry-Netherland; correct?

18 A. That's correct.

19 Q. They were not seized from Connecticut; right?

20 A. That's correct.

21 Q. And you relay, it's important, if you are going to enter a
22 PIN, to try to get the PIN right the first time; correct?

23 A. I would say for attempting a PIN, we should have a pretty
24 good idea that that may be the right PIN. We shouldn't just
25 randomly attempt PINs.

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Volchko - Cross

1 Q. Right, because you say in the third sentence: It is
2 important to note that unsuccessful PIN attempts always run the
3 risk of permanently disabling or wiping the device. Correct?

4 A. That's correct.

5 Q. And you asked Agent Efftting how he would like to proceed,
6 correct?

7 A. That's correct.

8 Q. And by the way, Agent DeMarino is on this e-mail as well;
9 correct?

10 A. That's correct.

11 Q. And he is one of the other case agents?

12 A. Yes.

13 Q. And if we can scroll up to the next e-mail on the chain?

14 He said, Agent Efftting says: Hi, Jess. Please try
15 those PINs. If that does not work, please let me know and I
16 will provide another option for us to try.

17 Do you see that?

18 A. I do.

19 Q. You don't know what information Agent Efftting had about the
20 search on East 64th Street when you gave you that information;
21 correct?

22 A. That's correct.

23 Q. You have no way of knowing whether information from that
24 search impacted his division to tell you to proceed, correct?

25 A. That's correct.

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Volchko - Cross

1 MR. QUIGLEY: We can take that down.

2 THE COURT: When you use the word "support" what do
3 you mean?

4 THE WITNESS: Depending on if you are referring to
5 brute force support.

6 THE COURT: Correct.

7 THE WITNESS: Depending on the model and the operating
8 system of the device we may not have a tool that can unlock the
9 devices or attempt to brute force the devices. So, as Apple
10 and other mobile devices are updating their software, we can
11 have support and then lose support with a new operating system
12 version.

13 BY MR. QUIGLEY:

14 Q. You are aware that brute force does not -- there is no
15 current brute force capability for iPhone 12 or later; correct?

16 A. That's correct.

17 Q. By the way, you did the extraction for 1B16 through 1B21?

18 A. That's correct.

19 Q. Is it right that it took over six months to extract those
20 devices?

21 A. I don't recall the exact time frame.

22 Q. Can we take a look at 3503-06 and scroll down to the second
23 page?

24 Could it have been six months?

25 A. It is possible.

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Volchko - Cross

1 MR. QUIGLEY: One moment, your Honor?

2 THE COURT: So, it doesn't help me if you say that
3 something is possible, I need something firmer than that.

4 THE WITNESS: I would have to refer to my examination
5 notes to determine when I submitted the unlock request and when
6 the extraction was completed.

7 THE COURT: Is that something that you have?

8 THE WITNESS: Yes. That's Government Exhibit 5, I
9 believe.

10 THE COURT: OK. You can refer to that. Do you have
11 that?

12 THE WITNESS: I don't have it with me.

13 MR. QUIGLEY: I think it is up there.

14 THE COURT: Is it on the screen now?

15 THE WITNESS: Yes.

16 THE COURT: Go ahead.

17 THE WITNESS: Are you referring to a specific evidence
18 item?

19 BY MR. QUIGLEY:

20 Q. I believe you wrote a message that on December 12, 2023,
21 all mobile device extractions, mobile device reports, forensic
22 images, work product files and reports, were copied to a
23 forensically-prepared hard drive.

24 Do you recall writing that?

25 A. I don't recall.

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Volchko - Redirect

1 Q. Would that have meant the extraction was complete on
2 December 12, 2023?

3 MR. HORTON: Objection, your Honor. She just said she
4 didn't recall the statement. He is asking her to explain.

5 MR. QUIGLEY: I think I was asking her to explain what
6 that statement would have meant.

7 MR. HORTON: She said she didn't say it.

8 THE COURT: Sustained.

9 MR. QUIGLEY: Your Honor, I have no further questions
10 for the witness.

11 THE COURT: Redirect.

12 REDIRECT EXAMINATION

13 BY MR. HORTON:

14 Q. Ms. Volchko, generally speaking, how many PIN attempts can
15 you try on a locked device?

16 A. It depends on the security settings and if we have brute
17 force capabilities. There is a security setting on an iPhone
18 that could potentially wipe a phone after 10 incorrect
19 attempts, but to my knowledge that is not enabled by default so
20 it really depends on the security settings of the phone and if
21 we are able to unlock it with one of our advanced tools.

22 MR. HORTON: No further questions, your Honor.

23 THE COURT: Recross.

24 MR. QUIGLEY: No, your Honor. Thank you.

25 THE COURT: Thank you. You may step out.

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Isolda - Direct

1 (Witness excused)

2 THE COURT: The government may call its next witness.

3 MR. HORTON: The government calls Christian Isolda.

4 THE COURT: How many more witnesses does the
5 government have?

6 MR. HORTON: This is our final witness, your Honor.
7 CHRISTIAN ISOLDA,

8 called as a witness by the Government,

9 having been duly sworn, testified as follows:

10 THE COURT: Please state your name and spell it.

11 THE WITNESS: My name is Christian Isolda.

12 C-H-R-I-S-T-I-A-N. My last name is Isolda. I-S-O-L-D-A.

13 THE COURT: You may inquire.

14 MR. HORTON: Thank you, your Honor.

15 DIRECT EXAMINATION

16 BY MR. HORTON:

17 Q. Good afternoon. Mr. Isolda.

18 A. Good afternoon.

19 Q. Where do you work?

20 A. I work at the Federal Bureau of Investigation.

21 Q. And do you work at a particular part of the FBI?

22 A. I do.

23 Q. And what part is that?

24 A. I work on a squad called CART.

25 Q. And how long have you worked at CART?

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Isolda - Direct

1 A. I have been with CART for approximately four and a half
2 years.

3 Q. Do you work on any particular section at CART?

4 A. I do. I work on a separate team as well called the Mobile
5 Device Unlock Team.

6 Q. Is that also called MDUS?

7 A. Correct.

8 Q. What are your duties at MDUS?

9 A. MDUS duties entail unlocking phones, performing extractions
10 on cell phones, as well as preparing broken devices or doing a
11 more advanced level of extraction on cell phones.

12 Q. What does the term "brute force" mean?

13 A. Brute force is a capability that comes in forensic tools,
14 some of our software that allows the guessing of passcodes
15 against the device or a file.

16 Q. And generally speaking, how does that work?

17 A. The tool -- the brute force tool goes and tries every
18 single passcode possible. For example, a six-digit passcode
19 has 1 million possible attempts so it will try all 1 million
20 attempts until it finds the correct passcode.

21 Q. And without the brute force tool, what would happen?

22 MR. QUIGLEY: Objection. Vague.

23 THE COURT: One moment, please. (Pause) I'm sorry.

24 The objection was?

25 MR. QUIGLEY: I'm going to withdraw the question.

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Isolda - Direct

1 THE COURT: All righty.

2 BY MR. HORTON:

3 Q. Can all phones be brute forced?

4 A. No.

5 Q. What determines whether the FBI is capable of accessing a
6 device on brute force?

7 A. Very dependent on the model of the phone as well as the
8 software that is running on the phone.

9 Q. Do you have experience using brute force techniques?

10 A. I do.

11 Q. In preparing to testify today, Mr. Isolda, did you review
12 any physical devices?

13 A. I did.

14 Q. Did those include phones that were labeled 1B70 and 1B71?

15 A. Correct.

16 Q. And what information, if any, did you review on those
17 devices?

18 A. I was able to verify the model of the device, as well as
19 the IOS version that was running on the device.

20 Q. And based on your training and experience what, if
21 anything, were you able to determine about the FBI's ability to
22 access phone 1B70 by brute force?

23 A. 1B70 would be brute forceable with the combination of the
24 model and the IOS version.

25 THE COURT: I'm sorry. The current combination of the

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Isolda - Direct

1 model? What do you mean by that?

2 THE WITNESS: The combination of the model, combined
3 with the software that's on that specific device.

4 BY MR. HORTON:

5 Q. Did you access the same information about 1B71?

6 A. I did.

7 Q. And based on your training and experience what, if
8 anything, were you able to determine about the FBI's ability to
9 access phone 1B71 by brute force?

10 A. 1B71 also has the ability to be brute forced.

11 Q. And why is that?

12 A. The model and the IOS version.

13 Q. What are biometrics?

14 A. Specific to?

15 Q. In the context of mobile devices, what are biometrics?

16 A. Biometrics is a way to unlock phones. For example, some of
17 the newer app devices have something called face ID where you
18 can unlock your phone with your face. Other phones have touch
19 ID which you can unlock your phone with your fingerprint.

20 Q. And can you determine whether a particular device has
21 biometrics enabled?

22 A. Yes.

23 Q. And how would you determine that?

24 A. There is a few different ways. Some of the wording on the
25 lock screen can indicate if biometrics is enabled. Another way

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Isolda - Cross

1 you can quickly tell is if you go into the settings of the
2 device, you can check the biometrics settings to see if it is
3 enabled or not.

4 Q. In preparing to testify today, did you review a device that
5 is labeled 1B15?

6 A. I did.

7 Q. Is that an iPhone?

8 A. Correct.

9 Q. What information about that device did you review?

10 A. I confirmed that the biometrics was enabled on that device.

11 Q. How did you determine that?

12 A. I went into the settings of the phone and I verified that
13 biometrics, specifically a face ID, was enabled on that device.

14 MR. HORTON: If I can have one moment, your Honor?

15 (Counsel conferring)

16 MR. HORTON: Thank you, Mr. Isolda, we have no further
17 questions, your Honor.

18 THE COURT: Cross-examination.

19 MR. QUIGLEY: Thank you, your Honor.

20 CROSS-EXAMINATION

21 BY MR. QUIGLEY:

22 Q. Good afternoon, Mr. Isolda.

23 A. Good afternoon.

24 Q. You were asked some questions about 1B70. Do you recall
25 that?

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Isolda - Cross

1 A. I do.

2 Q. And you were asked whether you reviewed whether that phone
3 could be brute forced; right?

4 A. Correct.

5 Q. You didn't conduct that analysis until you were preparing
6 to testify today; correct?

7 A. Correct.

8 Q. That was in the last couple of weeks?

9 A. Correct.

10 Q. Do you know when, approximately?

11 A. That was this morning.

12 Q. And 1B71, you didn't conduct any analysis on that phone
13 until after you knew you were going to testify today; correct?

14 A. Correct.

15 Q. When did you conduct that analysis?

16 A. That was also this morning.

17 Q. And 1B15, you didn't conduct any analysis on the biometrics
18 on that phone until you knew you were going to testify today;
19 correct?

20 A. Correct.

21 Q. When was that?

22 A. That was yesterday.

23 Q. These phones were seized over a year ago now?

24 A. I'm not sure when they were seized.

25 MR. QUIGLEY: One moment, your Honor?

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Isolda - Cross

1 (Pause)

2 Q. By the way you testified a little bit about brute force
3 capable; correct?

4 A. Correct.

5 Q. Even if a phone has the ability to be unlocked via using
6 brute force, there are variables that play into how long it
7 takes for that to happen; correct?

8 A. Correct.

9 Q. What is the longest you have seen a phone take to get
10 unlocked?

11 A. Personally?

12 Q. What is the longest you have heard of a phone getting
13 unlocked?

14 A. The longest I have heard of a phone to take to get unlocked
15 took, if I recall correctly, three years to get in.

16 Q. Do you know whether anyone did any analysis of whether it
17 would be reasonable to hold on to a phone for three years while
18 you were waiting for it to unlock?

19 MR. HORTON: Objection, your Honor.

20 THE COURT: Sustained.

21 MR. QUIGLEY: No further questions, your Honor.

22 THE COURT: Any redirect?

23 MR. HORTON: No questions from us, your Honor.

24 THE COURT: All righty, sir. Thank you. You may step
25 out.

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Isolda - Cross

1 THE WITNESS: Thank you.

2 (Witness excused)

3 THE COURT: One moment.

4 (Pause)

5 THE COURT: Mr. Quigley, are you going to put on any
6 witnesses?

7 MR. QUIGLEY: We are not, your Honor. Thank you.

8 THE COURT: I am not going to take argument at this
9 time. I am going to order a briefing schedule. I am advised
10 by our reporter that the transcript will be ready by tomorrow
11 morning, and so you are going to be filing your briefs
12 simultaneously, both parties at the same time. So, the opening
13 brief is due on April 12; and your opposition papers, both
14 sides, April 16.

15 Is there anything further?

16 MR. HORTON: No, your Honor.

17 MR. QUIGLEY: No, your Honor. Thank you.

18 THE COURT: Just a reminder, the final pretrial
19 conference is on May 14, and of course, trial is set for May
20 20. Thank you.

21 (Adjourned)

22

23

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6, 7, 8, 21 and 2762

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